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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 PAUL M. MITUNIEWICZ,

12 Petitioner,

13 v.

14 UNITED STATES OF AMERICA ,

15 Respondent.

Case No. C05-5577FDB

ORDER DENYING 2255 PETITION

16 In this Section 2255 petition, Petitioner, who pleaded guilty to one count of manufacturing
17 1000 marijuana plants pursuant to an Information, who explicitly waived his right to have the
18 quantity of drugs determined by a jury, and who was sentenced pursuant to the parties agreement to
19 120 months, seeks relief on two bases: that he was denied effective assistance of counsel and that his
20 base offense level was inflated based on convictions that have subsequently been ruled
unconstitutional.

21 Title 28 U.S.C. § 2255 provides a one-year statute of limitations for motions for collateral
22 relief, which runs from the date on which the judgment of conviction becomes final or from the date
23 on which a right newly recognized by the Supreme Court was made retroactively applicable to cases
24 on collateral review.

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26 ORDER - 1

1 Petitioner was sentenced on April 4, 2003 pursuant to the parties' plea agreement, and
2 Petitioner did not appeal his conviction or sentence. Petitioner's conviction became final on April
3 18, 2003, ten days (excluding Saturdays, Sundays, and legal holidays) after sentencing.

4 Petitioner filed this 2255 motion on September 2, 2005, well beyond the one-year limitation
5 period. Accordingly, this petition is time barred. Petitioner argues that *Rompilla v. Beard*, ____
6 U.S. ____, 125 S.Ct. 2456 (2005) recognized a right concerning ineffective assistance of counsel
7 in failure to research the details of the client's prior convictions, among other things, and that, thus,
8 Petitioner's 2255 motion is timely. Petitioner's argument fails, because a refinement of the
9 responsibilities of counsel in a death penalty case does not create a new right or "watershed" rule of
10 criminal procedure. As to Petitioner's assertion that the Supreme Court may someday hold that
11 *United States v. Booker*, ____U.S.____, 125 S. Ct. 738 (2005) is retroactive, this Court has
12 consistently held otherwise, as has the Ninth Circuit. *See United States v. Cruz*, 423 F.3d 1119 (9th
13 Cir. 2005).

14 NOW, THEREFORE, IT IS ORDERED: Petitioner Mituniewicz' Motion under 28 U.S.C. §
15 2255 To Vacate, Set Aside, or Correct Sentence is DENIED and this cause of action is
16 DISMISSED.

17 DATED this 6th day of January, 2006.

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19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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